

The Honorable Judge Robert S. Lasnik

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

JAMES MCDONALD,

Plaintiff,

V.

ONEWEST BANK, FSB, NORTHWEST
TRUSTEE SERVICES, INC., MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC., INDYMAC BANK FSB, DOES 1-50,

Defendants.

No. C10-1952 RSL

**DEFENDANTS ONEWEST, MERS,
AND NWTS' OPPOSITION TO
PLAINTIFF'S SECOND MOTION TO
COMPEL DISCOVERY**

**NOTE ON MOTION CALENDAR:
February 24, 2012**

I. RELIEF REQUESTED

COME NOW, Defendants OneWest Bank, FSB (“OneWest”), Mortgage Electronic Registration Systems Inc. (“MERS”), and Northwest Trustee Services, Inc. (“NWTS”) (collectively “Defendants”), by and through their counsel of record Heidi E. Buck, in response to Plaintiff’s Motion to Compel Discovery and respectfully request that the Court deny Plaintiff’s untimely Second Motion to Compel Discovery.

II. STATEMENT OF RELEVANT FACTS

The following outlines the timeline of Plaintiff's Discovery Requests and Defendants' responses and objections thereto:

- 1 • On or about April 4, 2011, Plaintiff filed with the Court his First Set of Requests for
- 2 Production. [Dkt. 54].
- 3 • On or about May 5, 2011, Plaintiff filed a Motion to Compel. [Dkt. 56].
- 4 • On or about May 12, 2011, Defendants filed a Motion for Protective Order. [Dkt. 58].
- 5 • On or about June 13, 2011, the Court entered an Order denying Plaintiff's Motion to
- 6 Compel and Defendants' Motion for Protective Order. [Dkt. 77]. The Court Ordered
- 7 Defendants to respond to Plaintiff's Requests no later than 14 days from entry of the
- 8 Order. *Id.*
- 9 • Fourteen days later on or about June 27, 2011, Defendants produced the documents in
- 10 response to Plaintiff's First Set of Requests for Production. To that end, Defendants
- 11 provided an explanation for those documents not produced advising that Defendants
- 12 had no knowledge of the listed document or that Defendants were continuing their
- 13 investigation and if responsive documents were located, they would be forthcoming.
- 14 See Declaration of Heidi Buck ("Buck Decl."), Exhibit 1.
- 15 • On or about June 28, 2011, Defendants produced additional documents in response to
- 16 Plaintiff's Requests for Production. Buck Decl., Exhibit 2.
- 17 • Between June 30, 2011 and July 11, 2011, Plaintiff and Defendants' counsel
- 18 communicated to clarify and discuss documents that Plaintiff believed were still
- 19 outstanding. Buck Decl.
- 20 • On or about July 1, 2011, Plaintiff propounded the Second Set of Requests for
- 21 Production on Defendants. Buck Decl.
- 22 • On or about July 1, 2011, Defendants expressed willingness to stipulate to an
- 23 extended discovery period. Buck Decl.

- On or about July 8, 2011, the Court entered an Order referring the subject case to Honorable James P. Donohue for settlement proceedings. [Dkt. 80].
- On or about July 11, 2011, the Court entered an Order staying all proceedings before the assigned District Judge “with the exception of motions for emergency relief.” [Dkt. 83].
- On or about August 1, 2011, Defendants served Plaintiff with their Response to Plaintiff’s Second Set of Requests for Production. Buck Decl., Exhibit 3.
- On or about November 18, 2011, the Court entered an Order lifting the stay on proceedings. [Dkt. 91].
- On or about December 15, 2011, Plaintiff contacted Defendants’ counsel in regard to responsive documents he believed were outstanding to his First and Second Set of Requests for Production. Buck Decl.
- On or about December 21, 2011, Defendants’ counsel responded advising she had been out of the office and hoped to have something to Plaintiff by December 22, 2011. Defendants’ counsel also advised that she would be out of the office December 23, 2011 through January 3, 2012. Buck Decl.
- On or about December 22, 2011, Plaintiff responded advising that he believed any further delay was unacceptable. Buck Decl.
- Between December 15, 2011 and February 17, 2012, Defendants worked diligently to locate all additional documents responsive to Plaintiff’s First and Second Set of Requests for Production. Buck Decl.
- On February 3, 2012, Plaintiff filed a Second Motion to Compel. [Dkt. 96].

- On or about February 17, 2012, Defendants served on Plaintiff their Supplemental Responses to Plaintiff's First and Second Set of Requests for Production and requested the Plaintiff withdraw his Second Motion to Compel. Buck Decl., Exhibits 4 and 5, respectively.

EVIDENCE RELIED UPON

Defendants' Opposition to Plaintiff's Second Motion to Compel is supported by the attached Declaration of Heidi E. Buck and the records and files already filed with the Court.

III. ARGUMENT

Plaintiff's motion to compel is insufficient as it requests the Court to order Defendants to do what Defendants are "already obligated to do—namely, provide full, accurate, non-evasive responses to all requests for production." *Kane v. City of Bainbridge Island*, C10-5731 RBL, 2011 WL 1832820 (W.D. Wash. May 13, 2011). As the *Kane* Court held, "[t]his is not the purpose of a motion to compel under Fed. R. Civ. P. 37." *Id.* "Such a motion should only be made by specifying a particular response to a request for production under Fed. R. Civ. P. 34 that fails to meet the discovery requirements." *Id.* (citing *See* 37(a)(3)(B)(iii)-(iv)).

Here, Plaintiff has simply submitted a motion including a general citation to Fed. R. Civ. P. 34(b).

Furthermore, Defendants have demonstrated that they have complied with their duty to provide full, accurate, non-evasive responses to all requests for production.

Following the Court's June 13, 2011, Order, which directed Defendants to respond to Plaintiff's First Set of Requests for Production, Defendants complied by serving upon Plaintiff documents in response to Plaintiff's First Set of Requests for Production or objections to the Plaintiff's First Set of Requests for Production.

Following service of Plaintiff's Second Set of Requests for Production, Defendants served their responses on Plaintiff, which set out their objections thereto.

Following production of the documents responsive to Plaintiff's First Set of Requests for Production, Defendants continued to discuss with Plaintiff additional discovery issues and search diligently for additional documents at Plaintiff's request.

As of February 17, 2012, Defendants have certified to Plaintiff, for each Request contained in Plaintiff's First and Second Set of Requests for Production that 1) while they have engaged in a diligent search, they have discovered nothing that is responsive, but will supplement if material responsive to the Request is later located, 2) that they have provided all documents which are responsive, or that 3) they object and the reasons for such objection.

IV. CONCLUSION

Plaintiff has failed to set forth with the required specificity what Requests for Production he believes have been insufficiently answered, and Defendants have demonstrated they have responded to Plaintiff's First and Second Set of Requests for Production in accordance with their duties under the Federal Rules of Civil Procedure. Accordingly, the Defendants respectfully request the Court deny Plaintiff's Second Motion to Compel.

DATED this 20th day of February 2012.

ROUTH CRABTREE OLSEN, P.S.

By: /s/ Heidi E. Buck
Heidi E. Buck, WSBA No. 41769
Attorneys for Defendants OneWest, MERS,
and Northwest Trustee Services, Inc.